

**R&E**  
**ROBERTS & ECKARD, P. C.**

**ORIGINAL**

ATTORNEYS AT LAW

1919 PENNSYLVANIA AVENUE, N.W., SUITE 222

WASHINGTON, D.C. 20006

JAMES S. BLITZ  
PAMELA C. COOPER  
LINDA J. ECKARD  
MARY L. PLANTAMURA  
LAWRENCE ROBERTS

TELEPHONE  
(202) 296-0533

TELEFAX  
(202) 296-0464

March 29, 1993

**RECEIVED**

**MAR 29 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: MM Docket No. 92-317  
Milford, Iowa

Dear Ms. Searcy:

Transmitted herewith, on behalf of Milford Broadcasting Company, are an original and six (6) copies of its Opposition to Motion to Enlarge Issues. Attached to the Motion is an Affidavit of Kevin W. Galbraith, which has been attested to by a notary public. A telecopied version of Mr. Galbraith's signature is being filed today. The original Affidavit will be filed as a supplement upon its receipt by the undersigned counsel.

If there are any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,

  
Linda J. Eckard

cc: Hon. Edward Luton  
Paulette Laden, Esq.  
Richard F. Swift, Esq.

0+6

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C.

RECEIVED  
MAR 29 1963  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Specifically, Mayer seeks to determine whether Kevin Galbraith, one of MBC's principals and source of financing for MBC's proposed facilities, has the financial wherewithal to meet his commitment to MBC.

2. The basis for Mayer's Motion is its conclusion that the information contained in the documents exchanged by MBC during discovery lacks sufficient detail and thus, does not support Kevin Galbraith's ability to loan money to MBC. Specifically, Mayer charges that Mr. Galbraith's failure to identify or itemize his current assets in stocks and bonds eliminates their consideration as an available source of financing. Further, Mayer claims that failure to define what constitutes cash equivalents on Mr. Galbraith's financial statement, or to indicate what percentage of the total is cash, is equally fatal. Mayer's conclusion is simply and indisputably wrong.

#### **MBC HAS MORE THAN SUFFICIENT FUNDS AVAILABLE**

3. MBC has more than adequately met its burden under the Commission's requirements for establishing its financial ability. In recognition of the importance of securing committed funds for construction and operation of its proposed facilities, MBC established the availability of \$650,000 to cover the estimated \$400,000 in costs. (See MBC application, FCC Form 301, Section III). Moreover, an accurate analysis of the information contained

in the Base Plan and Alternative Plan of financing, prepared and reviewed by Kevin Galbraith in support of his determination of his financial ability, reveals that more than sufficient funds are available to MBC to cover the costs associated with the proposed Milford station. In fact, at the time he agreed to make the necessary funds available to MBC, Mr. Galbraith had close to a million dollars in liquid assets available, an amount two and one half times MBC's estimated costs. As a result, there is simply no

~~is a sufficient amount of funds available to MBC to cover the costs of the proposed station.~~

considered and contemporaneously documented the funds he had available to commit to the project.

6. Mr. Galbraith prepared two plans of financing, a Base Plan which, by itself, adequately demonstrates the availability and liquidity of necessary funds, and an Alternative Plan, which would be relied upon if necessary to provide additional funds. (Both plans are attached to Mayer's Motion as Exhibits Nos. 1 and 2, respectively). Mr. Galbraith's Base Plan of Financing indicates that he had \$716,265 available in liquid assets. These assets are categorized as "cash and cash equivalents", "marketable securities" and a "note/loan receivable". Mr. Galbraith's Alternative Plan of Financing shows available liquid assets of an additional \$282,000, categorized as "marketable securities".

7. Mayer argues that because Mr. Galbraith's Base Plan neither defines the category of cash and cash equivalents nor specifically describes the marketable securities, MBC can claim no credit for those amounts. (Motion at pp. 4-5). Mayer bases this allegation upon her erroneous belief that the FCC, following its 1989 revision to FCC Form 301, now requires applicants "to identify and itemize current assets in stocks and bonds". However, Mayer cites nothing in the FCC's Order revising FCC Form 301 or the form itself to support this claim. Rather, Mayer references two Review Board cases decided more than twenty years ago, long before the

FCC's 1989 revision of Form 301.<sup>2</sup> While MBC adamantly disputes Mayer's assertion, as detailed below, even if this were the applicable standard, Mr. Galbraith had sufficiently reviewed the details of his personal wealth prior to agreeing to commit the required funds to MBC.

8. In 1989, the Commission revised FCC Form 301 in an effort to eliminate the filing of sham applications. In doing so, the Commission determined that it was necessary to return to past requirements that applicants carefully consider their ability to finance their proposed facilities prior to certifying their financial qualifications. The revised instructions to FCC Form 301 identify the kind of information which must be reviewed by applicants seeking to rely upon the financial commitments of individuals agreeing to furnish funds. Nowhere in these instructions does the Commission require delineation, such as that suggested by Mayer, of line items contained in personal financial statements. Rather, the instructions require that such statements show sufficient assets, in excess of liabilities, are available to the individual who has committed funds to the applicant.<sup>3</sup>

---

<sup>2</sup> MBC submits that the standard used by the Board in each of the cases cited by Mayer is inapplicable here. However, assuming *arguendo*, that itemization of stocks and proof of marketability was required to discern financial ability, MBC has met this standard. See *infra*.

<sup>3</sup> In light of the degree of specificity contained in these instructions and the Commission's concern that applicants investigate the certainty of their financial commitments, had the Commission required itemization it would have done so explicitly.

9. The Base Plan and Alternative Plan for Financing prepared and reviewed by Mr. Galbraith contemporaneously with his certification fully satisfied the Commission's requirements for supporting documentation. Despite Mayer's claim to the contrary, the category of "cash and cash equivalents" is a standard accounting term used regularly in the preparation of balance sheets and financial statements. At the time Mr. Galbraith's statements were prepared, the cash equivalents contained in this category amounted to \$17,500 in United States Savings Bonds leaving the remainder of 305,765 as cash on hand. (See Exhibit 1).

10. MBC does not dispute Mayer's claim that the item entitled "marketable securities" on Mr. Galbraith's financial statements does not specifically itemize those securities. However, as previously determined, such specificity is not required by the Commission. Nonetheless, as recited in his attached Affidavit, concurrently with the preparation of both the Base Plan of Financing and the Alternative Plan, Mr. Galbraith reviewed supporting information which did itemize and detail the marketable securities, including the number of shares and their market value. In arriving at the total value for the securities identified, Mr. Galbraith relied upon the share values listed in the most recent monthly NASDAQ report preceding his review, the September 2, 1991

~~monthly NASDAQ report preceding his review, the September 2, 1991~~

Galbraith's broker in March 1991.<sup>4</sup> This information provided adequate contemporaneous support for Mr. Galbraith's representation of the value of the marketable securities he owned and identified in MBC Base Plan and Alternative Plan of Financing.

11. Finally, Mayer implies that the absence of a line item identifying all liabilities on Mr. Galbraith's financial statements indicates that he failed to consider his outstanding liabilities in determining his financial ability. Again, Mayer is wrong. At the time his financial plans were prepared, Mr. Galbraith did consider his outstanding liabilities. Although not detailed in his financial statements, Mr. Galbraith did have three outstanding mortgages at the time he agreed to make the loan to MBC. As stated in his Affidavit, Mr. Galbraith viewed these obligations to be long-term liabilities. However, even when the portion of these liabilities which the Commission considers current are taken into account, those payments due in a one year period total only \$77,176. (See Affidavit of Kevin Galbraith). When subtracted from the assets contained in Mr. Galbraith's Base Plan, the remaining available funds are \$639,089, more than sufficient to cover the \$400,000 committed to MBC. When added to the \$282,000 available in the Alternative Plan, simple arithmetic reveals that Mr. Galbraith has \$921,089 in unencumbered funds - more than two times the total

---

<sup>4</sup> Although publicly traded, two of the stocks owned by Mr. Galbraith were not always listed in all circulated financial newspapers. A quote from the broker for these two stocks, whose combined value was \$31,000, was the most recent information available. (See Affidavit).



1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

28. [REDACTED]

29. [REDACTED]

30. [REDACTED]

31. [REDACTED]

32. [REDACTED]

33. [REDACTED]

34. [REDACTED]

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]

39. [REDACTED]

40. [REDACTED]

41. [REDACTED]

42. [REDACTED]

43. [REDACTED]

44. [REDACTED]

45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

50. [REDACTED]

51. [REDACTED]

52. [REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

57. [REDACTED]

58. [REDACTED]

59. [REDACTED]

60. [REDACTED]

61. [REDACTED]

62. [REDACTED]

63. [REDACTED]

64. [REDACTED]

65. [REDACTED]

66. [REDACTED]

67. [REDACTED]

68. [REDACTED]

69. [REDACTED]

70. [REDACTED]

71. [REDACTED]

72. [REDACTED]

73. [REDACTED]

74. [REDACTED]

75. [REDACTED]

76. [REDACTED]

77. [REDACTED]

78. [REDACTED]

79. [REDACTED]

80. [REDACTED]

81. [REDACTED]

82. [REDACTED]

83. [REDACTED]

84. [REDACTED]

85. [REDACTED]

86. [REDACTED]

87. [REDACTED]

88. [REDACTED]

89. [REDACTED]

90. [REDACTED]

91. [REDACTED]

92. [REDACTED]

93. [REDACTED]

94. [REDACTED]

95. [REDACTED]

96. [REDACTED]

97. [REDACTED]

98. [REDACTED]

99. [REDACTED]

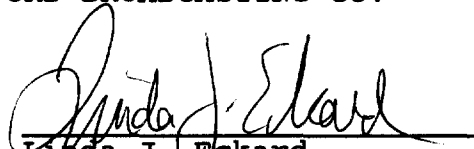
100. [REDACTED]

[illegible][illegible]

13. In light of the foregoing, no useful purpose will be served by the addition of the issues requested by Mayer. As such, the Motion to Enlarge Issues filed by Sharon A. Mayer must be DENIED.

Respectfully submitted,  
MILFORD BROADCASTING CO.

BY:

  
Linda J. Eckard  
Pamela C. Cooper

Roberts & Eckard, P.C.  
1919 M Street, N.W.  
Suite 222  
Washington, D.C. 20006  
(202) 296-0533

Its Attorneys

March 29, 1993

**EXHIBIT NO. 1**

**AFFIDAVIT**

**COMMONWEALTH OF PENNSYLVANIA**

**COUNTY OF CHESTER**

I, Kevin W. Galbraith, being duly sworn, hereby state as follows:

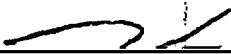
1. I am a stockholder in Milford Broadcasting Company ("MBC"), an applicant for authority to construct and operate a new FM station on Channel 27.1C2 at Milford, Iowa. I have read the Motion to Enlarge Issues filed by Sharon A. Mayer on March 10, 1993.

2. Ms. Mayer seeks to add issues to determine whether MBC is financially qualified to construct and operate its Milford facility. Specifically, Ms. Mayer seeks to determine whether I have the financial wherewithal to meet my commitment to loan funds to MBC. In response to Mayer's allegations, I hereby recite the following.

3. Prior to the filing of MBC's application, I agreed to

quote obtained from my broker was the most recently available information for two stocks whose combined total value was \$31,000.

6. In preparing my Base Plan, I understood the FCC's requirement to list current liabilities to mean those currently due and payable. I considered the amounts outstanding on the three mortgages I owe to be long-term liabilities and therefore did not separately list these values. The total amount of these obligations for a one year period beginning September 1991 was \$77,176.

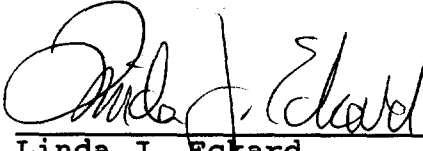


**CERTIFICATE OF SERVICE**

I, Linda J. Eckard, an attorney in the office of Roberts & Eckard, P.C., hereby certify that I have sent a copy of the foregoing OPPOSITION TO MOTION TO ENLARGE ISSUES by U.S. mail, postage pre-paid on this 29th day of March, 1993, to the following:

- \* Honorable Edward Luton  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, Second Floor  
Stop Code 0900  
Washington, D.C. 20554
  
- \* Paulette Laden, Esq.  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
2025 M Street, N.W.  
Washington, D.C. 20554

Richard F. Swift, Esq.  
Tierney & Swift  
Suite 210  
1200 18th Street, N.W.  
Washington, D.C. 20036  
Counsel for Sharon A. Mayer

  
\_\_\_\_\_  
Linda J. Eckard

\*By Hand